TAN CHENG SENG & ANOR. v. REX.

[App. Cr. Juris. (Murray-Aynsley, C.J. Singapore, Pretheroe, Ag. C.J., M.U. and Brown, J.) Dec. 19, 1947]
[Singapore — Cr. App. No. 87 of 1947]

Where one prisoner gives evidence implicating co-prisoner — Accomplice — Corroboration.

Where prisoners are tried jointly, and one of them gives evidence on his own behalf incriminating a co-prisoner, the prisoner who has given the incriminating evidence is not placed in the position of an accomplice, nor does the rule of practice with regard to the corroboration of an accomplice apply to such a case. The rule applies only to witnesses called for the prosecution.

Case referred to :—

(1) *R. v. Barnes & Richards*, 27, Cr. App. R. 154.

COURT OF CRIMINAL APPEAL.

Osborne-Jones for 1st Appellant.

Johnson for 2nd Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — This appeal was dismissed at the conclusion of the hearing.

The Court only considers it necessary to call attention to one point. At the hearing one of several co-accused gave evidence on his own behalf which gravely implicated another of the co-accused. It was contended on behalf of the latter that this evidence should have been treated as evidence of an accomplice, and required the same degree of corroboration.

In English cases, in particular *R. v. Barnes & Richards*[1], it has been held on several occasions that it is not so and we consider that these cases are applicable in this Colony.

Appeal Dismissed.

SYED JAFFAR v. REX.

[App. Crim. Juris. (Brown, J.) January 16, 1948]
[Singapore — Magistrate's Appeal No. 156 of 1947]

Evidence of accomplices — Corroboration — Corroboration must be independent evidence implicating the accused.

In this case the accused was charged with abetting the offence of criminal breach of trust of 21 bales of cloth the property of the Military. The only direct evidence that the accused committed the offence was the evidence of an accomplice. The learned District Judge said that he was not prepared to convict on the evidence of the accomplice in the absence of corroboration. He relied however on the report by the accused of a bogus robbery and on the fact that the accomplice on hearing of the report surrendered himself to the Police. One witness, Kassim, also gave evidence but the learned District Judge said that he did not regard his evidence as conclusive.

Held, (1) that the learned District Judge had misdirected himself in relying upon matters as affording corroboration which were not independent testimony implicating the accused and were not corroboration; (2) that though the evidence of Kassim afforded corroboration, if conclusively believed, the learned District Judge had not found that evidence to be conclusive and had not adequately considered it; (3) that as there was therefore no adequate corroboration of the evidence of the accomplice, the conviction of the accused must be quashed.

Cases referred to :—

(1) *Rex v. Lim Yam Hong*, 14 S.S.L.R. 152.

(2) *Rex v. Baskerville*, [1916] 1 K.B. 667.

MAGISTRATE'S APPEAL.

S. C. Goho for the Appellant.

M. Buttrose for the Respondent.

Cur. Adv. Vult.

Brown, J. : — This is an appeal against the conviction and sentence by the 2nd District Judge upon a charge of abetting the offence of criminal breach of trust in the theft of 21 bales of cloth the property of the military.

The only direct evidence that the appellant committed the offence was the evidence of Cherubal Shanker (P.W.7), who was an accomplice. He described how the appellant came to his house on the 14th of January and put the proposal to him that with the co-operation of a military driver the offence should be committed, and how, after further meetings, he and the appellant assisted in carrying out the theft on the 16th of January, which resulted in the appellant being paid $6,500. He described how the appellant had avoided paying him any part of the money, and when on the morning of the 21st of January he went to the appellant's house in the hope of getting the money he heard that the appellant had made a bogus charge of robbery against him, which caused him to surrender himself at Orchard Road Police Station.

The learned District Judge clearly appreciated the fact that the case against the appellant depended upon the evidence of the accomplice, and it is clear from his judgment that he had in mind the danger of convicting on the uncorroborated evidence of an accomplice. *Rex v. Lim Yam Hong*[1] is authority for the proposition that an appeal court will not always set aside a conviction based on the uncorroborated evidence of an accomplice if it is clear from the grounds of judgment that the Court below, being fully alive to the danger of convicting, was nevertheless so convinced of the truth of the accomplice's story that in